

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 91-021-18-1-4-00352-19  
**Petitioner:** MMI of Monticello, LLC  
**Respondent:** White County Assessor  
**Parcel:** 91-73-32-000-000.803-021  
**Assessment Year:** 2018

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

**Procedural History**

1. The Petitioner initiated its 2018 assessment appeal with the White County Assessor on July 16, 2018.
2. On February 25, 2019, the White County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioner.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On July 10, 2019, Administrative Law Judge (ALJ) Dalene McMillen held the Board's administrative hearing. Neither the Board nor the ALJ inspected the property.
5. President of MMI of Monticello, LLC, Hitesh Patel appeared for the Petitioner.<sup>1</sup> White County representative Scott Potts appeared for the Respondent. Both were sworn and testified.

**Facts**

6. The property under appeal is a retail shopping center located at 1110 West Broadway in Monticello.
7. The PTABOA determined the total assessment is \$399,500 (land \$166,800 and improvements \$232,700).
8. The Petitioner requested a total assessment of \$170,000 (land \$35,000 and improvements \$135,000).

---

<sup>1</sup> Mahendra Patel was sworn but did not testify.

## Record

9. The official record for this matter is made up of the following:

a) A digital recording of the hearing.

b) Exhibits:

- |                       |   |
|-----------------------|---|
| Petitioner Exhibit 1: | Income and expense statement ( <b>CONFIDENTIAL</b> ),   |
| Petitioner Exhibit 2: | Corporation warranty deed between Walmart Stores East, Inc., and Monticello Associates, LLC, dated November 15, 1999,   |
| Petitioner Exhibit 3: | Page one of the sales disclosure form dated May 2, 2018,  |
| Petitioner Exhibit 4: | 2018 rent rolls ( <b>CONFIDENTIAL</b> ),  |
| Petitioner Exhibit 5: | Broker listing for the subject property.  |
| Respondent Exhibit 1: | 2018 subject property record card,  |
| Respondent Exhibit 2: | Broker listing for the subject property,  |
| Respondent Exhibit 3: | Email correspondences between Hitesh Patel and Scott Potts dated October 4, 2017, and August 21, 2018,  |
| Respondent Exhibit 4: | Department of Local Government Finance (DLGF) Professional Appraisal Certification for Mr. Potts dated March 7, 2013; 50 IAC 15-4-1; Ind. Code § 6-1.1-31.7; and Mr. Potts' Application for Certification as a Professional Appraiser under Ind. Code § 6-1.1-31.7. |

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

## Contentions

10. Summary of the Petitioner's case:

- a) The subject property is over-assessed. The Petitioner purchased the subject property on May 2, 2018, for \$170,000.<sup>2</sup> According to the sales disclosure form, the Petitioner borrowed \$248,068 for the purchase. Mr. Patel explained the additional money was borrowed to make repairs to the building. The Petitioner still has roughly \$40,000 in escrow to pay for future commissions and tenant build-outs. *Patel testimony; Pet'r Ex. 3.*
- b) The subject property was originally listed for purchase or lease by the Bradley Company in 2017. According to the broker listing, the property was available for purchase for \$550,000 or available for lease for \$9.00 per square foot. The Petitioner

---

<sup>2</sup> According to the Petitioner, the closing process took place through the mail, therefore the Petitioner never received a complete copy of the sales disclosure form with the signature page. *Patel testimony; Pet'r Ex. 3.*

engaged in negotiations with the seller from October of 2017 to May 2, 2018. Eventually, the Petitioner purchased the property for \$170,000. The sale was an arm's-length transaction between non-related parties. *Patel testimony; Pet'r Ex. 3, 5.*

- c) At the time of purchase, the subject property included inherited conditions and restrictions from the original owner of the property, Walmart Stores East, Inc. The restrictions prevent certain types of retail stores from occupying the subject property, thus limiting the marketability. *Patel testimony; Pet'r Ex. 2.*
- d) The Petitioner submitted its 2018 income and expense statement and rent roll to indicate the subject property operated at a loss in 2018. This fact further illustrates the assessed value is overstated for 2018. *Patel testimony; Pet'r Ex. 1, 4.*
- e) In 2014 the subject property had an occupancy level of 100%. However, when the Petitioner purchased the property in 2018, the vacancy rate was greater than 50%. Because the property was operating at an occupancy level less than 70%, one occupant, Cato Fashions, was entitled to a rent reduction.<sup>3</sup> Cato Fashions receives a rent reduction of 50% per square foot and retains the right to terminate their lease with a 30 day notice. This increases the Petitioner's ownership risk. *Patel testimony; Pet'r Ex. 4.*
- f) In response to questioning, Mr. Patel stated the income and expense statement lists estimated income from January 1, 2018, to December 31, 2018. The incurred expenses are listed from May 2, 2018, to December 31, 2018. *Patel testimony; Pet'r Ex. 1.*

11. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The PTABOA lowered the 2018 assessment to \$399,500, a value that accurately reflects the market value-in-use of the property. *Potts testimony; Resp't Ex. 1.*
- b) The Petitioner's purchase price does not accurately reflect the property's market value-in-use. The property was listed for sale in 2017 for \$550,000. Seven months after being listed, the Petitioner purchased the property for \$170,000. This is a reduction in price of approximately 69%. This would suggest the sale price is the property's liquidation value and not its market value-in-use. *Potts testimony; Resp't Ex. 1, 2.*
- c) The subject property has sold multiple times over a twelve year period. The property first sold for \$1,835,000 on March 20, 2006. This was a lease-back on the property and was not an arm's-length transaction. Silver Creek Properties, LLC, purchased the property on May 15, 2014, for \$600,000. This sale was an arm's-length transaction. Therefore, the May 2, 2018, sale price of \$170,000 illustrates this was a distress or liquidation sale. *Potts testimony; Resp't Ex. 1, 2.*

---

<sup>3</sup> Cato Fashions occupies 4,698 square feet in leased area.

- d) Mr. Potts agreed that the subject property was largely vacant on January 1, 2018. However, he claims the vacancy was due to poor management. He also claims, the previous owner was a large company that could afford to absorb a big loss on the sale of the property. *Potts testimony*.

### **Burden of Proof**

12. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
13. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
14. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject for an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
15. Here, according to the subject property record card, the total assessment decreased from \$474,300 in 2017 to \$399,500 in 2018. Neither party offered any argument regarding the burden. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

### **Analysis**

16. The Petitioner made a prima facie case for reducing the assessment.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use.

Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

- b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For a 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
- c) In an effort to prove the subject property is over-assessed, the Petitioner offered the sales disclosure form indicating the Petitioner purchased the property on May 2, 2018, for \$170,000. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, the sale occurred approximately five months after the relevant valuation date, and we find it was timely enough to be probative.
- d) The Respondent attempted to undermine the reliability of the sale by asserting that it was a liquidation sale, and therefore should not be used to value the subject property.
- e) The Manual provides the following definition of "market value":

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgably, and for self-interest, and assuming that neither is under undue duress.

2011 REAL PROPERTY ASSESSMENT MANUAL at 5-6.

- f) While Mr. Potts argued that liquidation sales are not valid indicators of market value-in-use, he failed to provide any substantial evidence to support his conclusory claim that the Petitioner's purchase was in fact a liquidation sale. There was no evidence that the seller and the Petitioner were in any way related. The sales disclosure form indicates the condition of the sale was not due to a compulsory transaction. Further, the evidence indicates the seller was represented by the Bradley Company and the property was listed for sale in a typical fashion for commercial properties, thus the Board can reasonably infer the property was widely advertised. Moreover, the property remained on the market for at least seven months while the Petitioner engaged in negotiations with the seller, suggesting sufficient exposure to the market.
- g) Under these circumstances, we conclude that the Petitioner's purchase price was the result of an open market, arm's-length transaction, and that it accurately reflects the

property's market value-in-use as of January 1, 2018. The Respondent failed to offer any evidence of its own to prove a different value. Thus, the Respondent failed to rebut or impeach the Petitioner's prima facie case and the 2018 total assessment must be reduced to \$170,000.<sup>4</sup>

### **Conclusion**

17. The Board finds for the Petitioner.

### **Final Determination**

In accordance with the above findings and conclusions, the 2018 assessment must be reduced to \$170,000.

ISSUED: October 7, 2019

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

---

<sup>4</sup> The additional money the Petitioner borrowed is not relevant for this appeal because the Petitioner acquired the property after the relevant valuation date and would not have been able to make any improvements retroactively.